

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

BoEE case no. 05-22 ^A
DIA case no. 06BEE005

DANIELLE MICHELLE PETERSON,

Final Order

RESPONDENT.

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was held before Administrative Law Judge Jeffrey D. Farrell on March 13 and 14, 2006. On April 10, 2006, Judge Farrell issued a proposed decision. The proposed decision was served upon the counsel for the Respondent, the Assistant Attorney General prosecuting the case, and the Board.

The Board considered the proposed decision at its regular meeting on May 3, 2006. After examining the proposed decision, the Board unanimously approved a motion not to initiate review of the proposed decision. No appeal was received by the Board within the time allowed by rule.

ORDER

THEREFORE, pursuant to Iowa Code section 17A.15(3) (2005) and 282 IAC 11.27(2), the Proposed Decision recommending revocation of the Respondent's license now stands as the final decision of the Board. **Based upon the findings and conclusions set forth within the April 10, 2006, Proposed Decision**, all licenses issued by the Board to the Respondent, Danielle Michelle Peterson, and her privilege to serve as a school teacher in Iowa are **PERMANENTLY REVOKED with no possibility of reinstatement.**

Dated this 14 day of June, 2006.


George J. Maurer, Ed.D., Executive Director
On behalf of the Board

Iowa Board of Educational Examiners

In the matter of:)	Case No. 05-22
)	DIA No. 06BEE005
Danielle Michelle Peterson,)	
License No. 336195,)	
)	PROPOSED DECISION
Respondent.)	

This matter came on for an contested case hearing at the Lucas State Office Building on March 13 and 14, 2006. Assistant Attorney General Chris Scase represented the State. The State presented Beth Myers, John Epps, Thomas Mitchell, Randy DePhillips, and Dennis McMahon as witnesses.¹ The State's exhibits 1-7 were admitted.

Attorney Sharon Greer represented respondent Danielle Peterson. Ms. Peterson testified on her own behalf. She also presented Nick Delfrano, Martell Bolden, and Don Peterson as witnesses. Respondent's exhibits A-E were admitted.²

FINDINGS OF FACT

Introduction: Respondent Danielle Peterson received her teaching license in January of 1998. She substitute taught until obtaining her first full-time job for the Louisa-Muscatine Community School District for the 1998-1999 school year. She resigned her employment with Louisa-Muscatine on April 24, 2002.³ (Exhibits 2, 7).

Respondent obtained a full-time teaching job for the Des Moines Independent Community School District (Des Moines) beginning with the 2002-2003 school year. Respondent was assigned to teach behavior disorder students in the Bridges program. Respondent taught junior high and high school students over the course of three years in Des Moines.

Respondent resigned her employment with Des Moines on March 8, 2005, in the face of an internal investigation into her conduct. (Mitchell testimony; Exhibit 4). The school began an investigation after respondent was arrested on burglary charges on December 12, 2004. Des Moines' investigation branched into

1 Mr. McMahon was a rebuttal witness.

2 Exhibit E is a copy of a court order releasing respondent from probation. It was submitted and admitted after the hearing, based on the agreement of the parties.

3 The Louisa-Muscatine job is discussed further below.

other areas of alleged misconduct, including whether respondent used drugs with students, had sexual relations with students, and engaged in illegal conduct in the presence of students. (Myers, Mitchell testimony; Exhibit 3).

On June 27, 2005, Des Moines filed a complaint with the Iowa Board of Educational Examiners (the board). Des Moines alleged that respondent engaged in unprofessional conduct in four respects:

- 1) Committing a criminal offense that is relevant to her teaching performance;
- 2) Indecent contact with a student;
- 3) Soliciting, encouraging, or consummating an inappropriate relationship with a student; and
- 4) Failing to make a reasonable effort to protect the health and safety of a student.

The board assigned Dennis McMahon to investigate the complaint. Beth Myers assisted in the investigation. Ms. Myers prepared a summary of the interviews, which was made part of the record. (Exhibit 3, pp. 27-29). The board also received documents from Des Moines' investigation. (Exhibit 3).

I have summarized the evidence to focus on four principal factual allegations:

- 1) Respondent's criminal conviction;
- 2) Whether respondent involved a student in the criminal conduct that led to her conviction;
- 3) Whether respondent had sexual relationship with a student;
- 4) Whether respondent purchased from or used illegal drugs with a student.

Criminal conviction and student involvement: On November 29, 2004, respondent's ex-fiancé⁴ called the West Des Moines Police

⁴ I elected not to refer to the burglary victim by name. Respondent made inflammatory accusations about her ex-fiancé during the hearing. Those accusations were not central to the

Department (WDMPD) to report a burglary at his home. He reported several items missing, including a lock box, cameras and a camera bag, rings, coins, and other items. He acknowledged to officers that he may have left a back door unlocked. (Exhibit 6).

Respondent's ex-fiancé told one of the officers that respondent should be a suspect. The ex-fiancé stated that respondent had called him earlier in the day to ask if she could borrow a pet carrier. She called later and said she would not stop by because she had a "bad day." He thought the calls unusual, but was not immediately suspicious. However, he began to consider respondent as a suspect because his dog was in the house at the time of the burglary. Respondent lived in the home for several months, so the dog knew her. Unlike a stranger, respondent could enter the house without arising the ire of the dog. (Exhibit 6).

The ex-fiancé told officers that respondent is a teacher for Des Moines. He stated that they separated during the previous May, in part, due to her marijuana usage and because she maintained friendships with men with criminal histories. He referenced [REDACTED] as one of those men. He described Mr. [REDACTED] as 18 years old, black, 5'7", with a thin build. At the time, WDMPD were considering accomplices because there were multiple sets of footprints in the snow outside the home. (Exhibit 6).

The ex-fiancé called WDMPD just after midnight on November 30, 2004, to provide additional information. He called from a dumpster outside respondent's apartment complex on Park Avenue in Des Moines. An officer met him at the scene. The ex-fiancé stated that he found what appeared to be his lock box, as well as other items, in the dumpster. (Exhibit 6).

On November 30, 2004, WDMPD referred the case to Detective Randy DePhillips. Detective DePhillips contacted the school principal to ask permission to interview respondent. Detective DePhillips first interviewed respondent at the school. (Exhibit 6; DePhillips testimony).

Detective DePhillips asked respondent whether she knew anything about the burglary the day before. Respondent said she had been working all day and did not know anything about it. When asked if she knew who might have done it, she said it might have been

charges against her. He did not testify, so he did not have an opportunity to rebut respondent's ancillary allegations. In light of these factors, I see no reason to identify the victim by name in this public decision.

one of her students. When Detective DePhillips asked about the items in her dumpster, respondent stated that her students knew where she lived. Detective DePhillips asked respondent if he could search her apartment. Respondent agreed. They left the school and went to the apartment. (Exhibit 6; DePhillips testimony).

Respondent changed her story after reaching her apartment. She admitted taking items from her ex-fiancé's home. According to Detective DePhillips, respondent said she was in financial distress and needed cash to repay loans from her father. She stated that she pawned both rings and the camera, and cashed in the loose change for currency. She said she received a total of \$555. Respondent stated that she had pawned the camera at a shop on Army Post Road and the rings on East 14th Street. She still had \$238 in cash, which she handed over to Detective DePhillips. She said she acted alone. She allowed Detective DePhillips to search her car, where she had some mint coins that had also been reported missing. (Exhibit 6; DePhillips testimony).

Officers went to both pawn shops and retrieved the pawned items. One of the pawn shop employees, a retired Des Moines police officer, said he was present when respondent pawned the rings. The employee stated that respondent was with a young black male. He recalled the transaction because respondent was arguing with the male while they were present. The store has surveillance cameras, but they were not operational during the transaction. (Exhibit 6; DePhillips testimony).

On December 2, 2004, Detective DePhillips went back to respondent's apartment. Detective DePhillips asked for the name of the person who was with her when she pawned the rings. According to Detective DePhillips, respondent stated that her friend, [REDACTED], was with her. Also according to Detective DePhillips, respondent admitted that Mr. A [REDACTED] was with her when she took the items from her ex fiancé's home. Detective DePhillips also asked about men's clothing and size 12-13 shoes at the apartment. Respondent responded by saying that Mr. A [REDACTED] was staying with her. Detective DePhillips arrested respondent and transported her to the Polk County Jail. (Exhibit 6; DePhillips testimony).

Respondent recalls her interaction with Detective DePhillips differently. She testified that, on a general level, the officers were considerate during their first meeting, and rude and combative during the second meeting. She denied stating that she was in financial distress during the first meeting. She

testified that the only reference she could have made to her father was that her father would have been liable for bills for her wedding to her ex-fiancé. (Respondent testimony).

Respondent also denied that Mr. A was with her at her ex-fiancé's home, that he was with her when she went to the pawn shops, or that he lived with her. She explained that Detective DePhillips found a transcript for Mr. A in her apartment and confronted her with heavy-handed questions such as "He was with you, wasn't he?", to which she responded sarcastically with a response like, "Sure, whatever you say." She stated that the male clothes in her apartment were items she had purchased for her ex-fiancé with her Younkers discount (she worked there part-time). She claimed that she wanted to maintain a good relationship with him, so she bought clothes with her discount and he would repay her later. (Respondent testimony).

Respondent testified that she went to her ex-fiancé's home on November 29, 2004, to pick up the pet carrier because she wanted to take her cat to the vet. She arrived early and let herself in the backdoor, which was open. She testified that she became very angry while at the home. She stated that she put money into the home while living there, but her ex-fiancé retained the benefits. She also paid for part of the setting for her engagement ring, but he kept it after they broke up. As she put it, she felt anger over "getting screwed so royally" by her ex-fiancé. She claimed that this bout of anger led her to take and pawn items from the home. (Respondent testimony).

Respondent testified that her ex-fiancé did not provide accurate information to police. For example, she stated that her drug use did not cause the break-up of their relationship. Rather, she testified that they broke up with him after she found evidence on their computer that he had visited internet sites for swingers groups, and was trying to up with local swingers. Respondent also denied knowledge regarding how her ex-fiancé's belongings ended up in her apartment's trash bin. She insinuated that he planted the items there.

Mr. A testified that he did not go with respondent to the ex-fiancé's home nor the pawn shops. Mr. A testified that respondent tutors him, which is why she had a copy of his transcript at her apartment. A (testimony).

WDMPD initially charged respondent with burglary in the third degree. On April 5, 2005, respondent pled guilty to a lesser

charge of trespass with damage in an amount greater than \$200.⁵ Respondent received a suspended sentence with informal probation, and was required to pay restitution to the victim. Respondent has satisfactorily completed her restitution and probation requirements, and the court has discharged her from probation. (Exhibits 5, E).

Sexual relations with a student: Mr. ^A [redacted] was a student in the Des Moines school district during the period in question. He was adjudicated delinquent on a weapons charge and assigned to a specialized program at PACE. Respondent did not teach any of his classes at PACE. Mr. ^A [redacted] testified that he was introduced to respondent through his mother. He stated that his mother met respondent at a nightclub. He testified that his mother asked respondent whether she tutors. Thereafter, respondent began tutoring Mr. ^A [redacted]. (Bolden testimony; Exhibit 3).

The strongest evidence of a sexual relationship comes from the board investigators' interview with Jody Holley. Ms. Holley taught at Bridges. Respondent told Ms. Holley that she was either in a physical or sexual relationship with Mr. ^A [redacted], or referenced him as a boyfriend. Ms. Holley stated that respondent mentioned sexual incidents and seemed proud of them. Ms. Holley told respondent that Mr. ^A [redacted] was a student. On a later occasion, Ms. Holley witnessed respondent crying over a ^A [redacted].⁶ Ms. Myers testified that Mr. Holley did not appear to have any animus against respondent; rather, Ms. Holley seemed concerned about her well-being. (Exhibit 3; Myers, McMahon testimony).

There is some ancillary evidence to support the claim. ^B [redacted] was a student at Bridges. During an interview with school staff, Mr. ^B [redacted] stated that he knew that respondent was "having sex with some 17 year old dude." He said that he was present when respondent was talking to a male known to him as ^A [redacted]. Mr. ^B [redacted] said he told respondent that ^A [redacted] was only 17. He said that he knew the other male because he had sold him drugs. Mr. ^B [redacted] repeated the claim that respondent had some sort of relationship with ^A [redacted] during two other interviews. Additionally, respondent's ex-fiancé had referred to Mr. ^A [redacted] as a friend, although he did not claim that they were sexually involved. (Exhibit 3, pp. 13-17, 29; exhibit 6).

⁵ See Iowa Code section 716.8(2).

⁶ Mr. ^A [redacted] testified that his nickname is ^A [redacted].

During the hearing, Mr. ^B [redacted] denied knowing ^A [redacted]. The State insinuated that Mr. ^B [redacted] minimized his statements during the investigation and hearing because he was concerned about Mr. ^A [redacted] being a gang member. Mr. ^B [redacted] stated during his first interview with the school that his mother "just bought a home and I don't want any drama over this." (Exhibit 3, pp. 13-14).

Respondent and Mr. ^A [redacted] both testified that they did not have a sexual relationship. Respondent denied telling Ms. Holley that she had a sexual relationship with Mr. ^A [redacted]. Respondent testified that she had a tense relationship with Ms. Holley. She testified that Ms. Holley believed that respondent was trying to steal Ms. Holley's boyfriend. Respondent insinuated that Ms. Holley may have been biased due to this unwarranted perception. Respondent claimed that this is another example how she was a victim of rumor and innuendo at the school. Mr. ^A [redacted] denied any gang membership and testified that he did not know Mr. ^B [redacted]. (Respondent, Bolden testimony).

Use of controlled substance with a student: During the course of Des Moines' investigation, a teacher reported that respondent may have had sexual relations with and used illegal drugs with ^B [redacted]. Des Moines interviewed Mr. ^B [redacted] on two occasions. The board investigators interviewed him on one occasion. He also testified at hearing. I summarize each of Mr. ^B [redacted]'s statements because his credibility is an element in this case.

On February 4, 2005, John Epps and Fran Graziano of Des Moines interviewed Mr. ^B [redacted] for the first time.⁷ Mr. ^B [redacted] denied having a sexual relationship with respondent. Mr. ^B [redacted] also denied any direct information about respondent using drugs. (Exhibit 3, pp. 13-14; Epps testimony).

On February 28, 2005, Mr. Epps interviewed Mr. ^B [redacted] again, after a teacher suggested that he might provide additional information. Mr. ^B [redacted] stated that he sold drugs to and used drugs with respondent on many occasions. He said that he met respondent at her apartment to sell and use drugs. He said that he did not see her use at school, but he once asked her to hide his pipe in her desk after he accidentally brought it to school. He stated that Martel was present on some occasions. Mr. ^B [redacted] did not allege that he sexual relations with respondent. (Exhibit 3, pp. 15-17; Epps testimony).

⁷ Mr. Epps and Ms. Graziano were administrative employees at Bridges.

On September 27, 2005, Mr. McMahon and Ms. Myers from the board interviewed Mr. B. Mr. B. recounted the day that respondent held his pot pipe after he mistakenly brought it to school. Mr. B. stated that when he got the pipe back, it appeared some of the marijuana had been smoked. He assumed respondent was a user. Thereafter, he began selling to and using drugs with respondent. Mr. B. stated that he met A at respondent's apartment. Mr. B. stated that A was living there. Mr. B. denied having sex with respondent, but said he would not be surprised if she had with other students based on rumors. (Exhibit 3, p. 29).

Mr. B. testified at the hearing that he sold drugs to respondent and smoked marijuana with her at her West Des Moines home (at the time she was engaged) and her Park Avenue apartment.⁸ Mr. B. did not remember some of the details of their drug use. He stated that he is currently clean and wants to forget the days that he was heavily involved in drugs. B. (B. testimony).

However, Mr. B. was clear about certain events. For example, he described in detail the day that he asked respondent to hold his pot pipe at school. He stated that he accidentally brought it to school and did not want to hold it because the school conducted periodic locker searches. He asked respondent if she would hold it, and she agreed. He said he learned she did drugs after she told him that his pipe looked cool. B. (B. testimony).

Mr. B. described one occasion in which he drove to respondent's West Des Moines residence with a friend to smoke pot. He said he was high when he got there. Mr. B. generally described the location, the outside of the home, and the living room area of the house. He could not recall the address, but testified that he got there via 63rd Street and would be able to recall the location if on route by car. He described the home as a two-story with a garage in front. Mr. B. said he only saw the living room and kitchen on the inside. Respondent's attorney asked him to draw a rough diagram of the house with the location of the kitchen and the living room. B. (B. testimony; Exhibit D).

Mr. B. stated that he also visited respondent at her Park Avenue apartment. He stated that the apartment was by a Quik

⁸ Mr. B. testified under a subpoena issued to respondent.

Shop. He stated it was a small apartment in the basement of the complex. B([REDACTED] testimony).

Mr. B [REDACTED] testified that he was not pressured by the school to change his initial statement. He stated that he initially denied his drug activity with respondent because he did not want to get involved. B([REDACTED] testimony).

Respondent testified that she has never used with nor bought drugs from Mr. B [REDACTED]. She testified that Mr. B [REDACTED] has never been to the West Des Moines home. She described the home as bright red with a garage underneath the home. She stated that the living room was downstairs, not upstairs as described by Mr. B [REDACTED]. She testified that the dog always jumps on visitors (she said this to make the point that Mr. B [REDACTED] did not reference a dog). Respondent stated that her Park View apartment is on the second floor, not the basement. Respondent testified that Mr. B [REDACTED] called her after his second interview with Mr. Epps to complain that Mr. Epps threatened to send him to Meyer Hall if he did not cooperate. (Respondent testimony).

Other evidence of alleged misconduct at Bridges: The record includes documents from Des Moines' investigation. The reports include evidence of other allegations against respondent, ranging from crossing inappropriate boundaries in the classroom to additional allegations of drug use with students. (Exhibit 3).

The evidence underlying these additional allegations is somewhat helpful as background, but it does not establish independent violations of the board's regulations. The record shows that respondent was orally counseled on occasion for perceived boundary and anger management issues. However, she was never formally disciplined by the school until after her arrest. Respondent was assigned to teach behaviorally challenged students, so there are bound to be more student conflicts than in a mainstream classroom. There was considerable change at the school during respondent's tenure, including changes in buildings, administrators, and teaching assignments. None of the fact witnesses to these other allegations testified at hearing. The evidence regarding these additional allegations is not sufficiently reliable to support independent violations.

Respondent's resignation from Louisa-Muscatine: The State submitted evidence, over respondent's objection, that respondent resigned after an internal investigation from a prior teaching position for the Louisa-Muscatine schools. On April 18, 2002, Louisa-Muscatine served a termination notice based on the

following allegations: 1) storing marijuana in her teacher's desk; 2) allowing students and/or participating with students in the use of marijuana in school; 3) inappropriate sexual discussions with students; and 4) failure to appropriately supervise students' use of school computers. Respondent resigned six days later pursuant to a settlement agreement in which the school agreed not to file a complaint with the board nor contest unemployment, among other terms. The State argued that the allegations from the Louisa-Muscatine investigation were probative because they are similar to the allegations in this case. (Exhibit 7).

Respondent opened her response to the Louisa-Muscatine allegations with a statement that "I have had the worst luck with administrators." Respondent testified that the charges against her resulted after she benched the principal's daughter while coaching a basketball game. She stated that other female teachers were similarly subjected to unfair treatment by administration. Respondent testified that she signed the settlement, per the advice from her representative, because she was leaving the district to move to central Iowa in any event. (Respondent testimony).

The nature of the allegations by Louisa-Muscatine are concerning because they are similar to the allegations in this case. I am also concerned that respondent's response to the allegations is consistent with a pattern of blaming others without taking any responsibility for any of her actions. However, I did not give weight to evidence surrounding respondent's resignation from Louisa-Muscatine on the substantive charges (although I gave some weight to her explanation as determinative of credibility). The settlement agreement constitutes the resolution of disputed allegations with no express admission of wrongdoing by respondent. The school agreed not to file a complaint with the board, did not contest her unemployment claim, and agreed to give a neutral recommendation. There is no direct or detailed evidence in the record showing whether the allegations were meritorious. It would be potentially prejudicial to give weight to the allegations made by Louisa-Muscatine based on the record before me.

CONCLUSIONS OF LAW

The Iowa Board of Educational Examiners (the board) was created to regulate the teaching profession in Iowa.⁹ The board grants

⁹ Iowa Code section 272.2.

licenses to applicants who meet standards created by the board. The board is required to adopt a code of professional rights and responsibilities, practices, and ethics. The board is responsible to enforce its regulatory standards by initiating disciplinary action against an licensee who violates the standards. The board's code of professional conduct and ethics is set forth in 282 IAC chapter 25.

The board may refer a licensing case to an administrative law judge (ALJ) employed by the Iowa Department of Inspections and Appeals to conduct a contested case hearing.¹⁰ In the event the presiding officer or the board finds a violation, it has an array of disciplinary options ranging from a public reprimand to license revocation.¹¹

Criminal conviction: Licensees shall abide by all federal, state, and local laws applicable to the fulfillment of professional obligations.¹² The regulation lists a number of criminal provisions that are, by definition, relevant to or affects teaching performance. However, the board may consider the impact of any criminal conviction in light of the following six factors:

1. nature and seriousness of the offense,
2. time elapsed,
3. rehabilitation,
4. likelihood of reoffense,
5. number of offenses, and
6. mitigating and other factors.

I interpret the six factors to lead to a common sense approach. For example, the board might take minimal or no disciplinary action if a teacher was convicted of a single simple misdemeanor offense that had no relation to her teaching position. However, if the same teacher was convicted of repeated simple misdemeanor offenses and showed no signs of accountability or rehabilitation, the board would be required to take disciplinary action.

Respondent's conviction must be judged based on the final judgment, not the original charges. She was convicted of a serious misdemeanor. She was given a suspended sentence with informal probation, which is a very light punishment. She has successfully completed her probation and has been discharged by

¹⁰ 282 IAC 11.8.

¹¹ Iowa Code section 272.2(4); 282 IAC 11.33.

¹² 282 IAC 25.3.

the court. She has no other convictions on her record. While the offense is recent, I give this factor less weight because respondent only has one conviction.

The nature and seriousness of the offense are arguably reflected by the court's acceptance of the plea bargain and imposition of a minimal sanction. I am concerned about respondent's acceptance of responsibility, which I consider part of the rehabilitation element. Respondent admitted it was wrong to take things from her ex-fiancé's home and trade them for cash. However, in doing so, she also leveled considerable blame at her ex-fiancé. I will discuss this concern in greater depth later in this decision when I discuss respondent's credibility.

Based on the six factors, I find that respondent's conviction does not arise to the level of affecting her teaching performance. Even if it did meet the regulatory criteria, I would impose, at most, a letter of public reprimand as punishment for the violation.

Student involvement in criminal activity: The board's regulations prohibit a licensee from failing to make reasonable efforts to protect the health and safety of a student.¹³ The State alleged that respondent violated the regulation by involving a student, A [REDACTED], in the criminal conduct that led to her conviction. Respondent denied that Mr. A [REDACTED] was present during any of the criminal activity.

The State initially suspected more than one person involved in the burglary because officers found multiple sets of footprints in the snow outside the home. When respondent first admitted that she took items from the home, she stated she acted alone. However, Detective DePhillips obtained conflicting evidence from a retired Des Moines police officer who worked at the pawn shop. The retired officer stated that respondent was with a younger black male. Detective DePhillips reinterviewed respondent, and A [REDACTED] according to Detective DePhillips, respondent then admitted that A [REDACTED] was with her at the home and when she went to the pawn shops.

Respondent and Mr. A [REDACTED] testified that Mr. A [REDACTED] was not present at the ex-fiancé's home or the pawn shops. Respondent attempted to explain her admission to officers as her sarcastic response to Detective DePhillips attempt to force her into a confession. Respondent also points out that the pawn shop had a

security camera, but there is no photo or film showing her with a black male at the pawn shop. However, there is no reason to doubt the pawn shop's statement that its security cameras were not working.

The question is whether the State's evidence outweighs the sworn denials by respondent and Mr. [REDACTED]. When evaluating the testimony, I consider traditional credibility factors, including:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witnesses' interest in the trial, their motive, candor, bias and prejudice.¹⁴

Respondent's testimony was not credible for a number reasons, some of which I discuss below. She made statements during the course of the case that simply make no sense. For example, when police first asked respondent if she had any knowledge of the burglary at her ex-fiancé's home, she said she knew nothing about it, but that several students knew that she had lived there. When asked why police would find her items from her ex-fiancé's home in the dumpster outside her apartment, she again mentioned that students know where she lives. Apparently, she was trying to lay the groundwork for a claim that a student might frame her by burglarizing her ex-fiancé's home. Respondent only backed away from this story after the consent search of her apartment revealed that she had possession of some of the items.

Respondent's testimony regarding her motivation for taking the items also lacks belief. She claims that she was going to meet her ex-fiancé at his home to borrow a pet carrier. She arrived before he got home. According to her story, she let herself in the home, started to look at some of the improvements that she had helped finance, and became enraged at getting "screwed so royally" during their breakup. Her story then follows that she took a number of items out of a fit of anger. This story seems implausible enough on its own, but even more so when considering other evidence. For example, respondent said she and her ex-

¹⁴ State v. Holtz, 548 N.W.2d 162, 163 (Iowa App. 1996) (citing Uniform Jury Instructions).

fiancé were getting along well after their breakup, even to the extent she would buy him clothes by using her Younkers discount. If so, it is unrealistic that she then go ballistic and take a number of items and \$65.00 in loose change from the home. Additionally, if she wanted to reclaim things she saw as hers or partially hers, it makes no sense that she immediately pawned them for cash.

I am also puzzled by respondent's testimony resulting from her explanation why she pawned the rings and camera. Detective DePhillips stated that respondent told him during the first interview at her apartment that she was in financial distress and needed to repay a loan to her father. This seemed logical. However, during the hearing, respondent denied making the statement, and instead claimed that the only reference she made about her father was that he would have been liable for her wedding to her ex-fiancé. This explanation makes no sense. Respondent and her ex-fiancé broke up several months before the interview. There is no reason she would discuss with police her father's liability for a wedding that would never take place.

Respondent's credibility is also impacted by the blame that she placed on her ex-fiancé, even after she pled guilty for taking items from his home. Respondent acknowledged that she should not have taken things from her ex-fiancé's home. If she had stopped there, I would have given her some degree of credit. Instead, she also tried to smear her ex-fiancé by testifying that he contacted internet swingers' sites, insinuated that he planted evidence in the dumpster of her apartment, and blamed him for making her so mad that she took things from his house. Respondent's failure to take real accountability for her criminal conduct impacts the candor of her testimony on other claims.

Respondent's explanation regarding her admission to Detective DePhillips about Mr. [REDACTED]'s involvement is also suspect. Detective DePhillips reinterviewed respondent after learning from a pawn shop employee that she was not alone when she pawned the items. During the second interview, Detective DePhillips asked respondent whether Mr. [REDACTED] was with her. She then admitted that he was with her.

At hearing, respondent claimed the admission was a sarcastic response to Detective DePhillips' bullying tactics. I can accept the proposition that Detective DePhillips was blunt when questioning respondent - he had just obtained evidence indicating that respondent lied to him during the first interview. However, there is no reasonable ground to believe respondent made an

admission on a point that was not true. Respondent was interviewed the day before and understood the nature of the investigation, so she could not have been caught off-guard by the second interview. Further, respondent does not have a propensity of making admissions against her interest. She has resigned two separate teaching positions under pressure without taking accepting any responsibility, and instead blamed administrators, teaching colleagues, and students for unjust accusations. As discussed above, she blamed her ex-fiancé and police rather than take accountability for the conduct underlying her criminal conviction. Based on the record before me, I do not believe that she made a coerced admission.

Respondent obviously has a strong interest in the proceedings. I do not always consider bias as a factor because any party to a licensing proceeding could be said to be biased. However, in this case, the inconsistency and implausibility of her testimony appears calculated to save her career. Her interest in the proceedings cannot be disregarded.

The State's evidence, on the other hand, is logical and reasonable. Investigators at the scene of the burglary found two sets of footprints. As a result, police considered two suspects from the beginning. Detective DePhillips learned from a retired police officer who worked at a pawn shop that respondent pawned the items with a younger black male. There is no reason why the pawn shop employee or Detective DePhillips would fabricate that statement. The description is general, but it does show that someone was with respondent and that she was not truthful with police. Further, the description, while general, does match Mr. [REDACTED]. Thereafter, once presented with the above information, respondent admitted that Mr. [REDACTED] accompanied respondent to her ex-fiancé's home and the pawn shops.

In summary, the State has met its burden of proving that Mr. [REDACTED] accompanied respondent when she unlawfully entered her ex-fiancé's home, took items from the home, and pawned some of the items for cash. Respondent violated the board's regulation by committing illegal activity with and in the presence of a student of the Des Moines schools.

The violation is serious. Teachers are role models to students. Mr. [REDACTED] was a troubled student with a juvenile record on a weapons charge. He had been placed in a structured educational program, in part due to an abysmal academic record. Mr. [REDACTED] needed a positive role model, not additional participation in criminal activity. A severe sanction is warranted.

Sexual relations with a student: The board prohibits teachers from sexual or indecent contact with students.¹⁵ The board also prohibits teachers from soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student.¹⁶

This charge is somewhat similar to the prior charge in the sense that respondent's credibility issues apply equally to this charge. While respondent and Mr. [REDACTED] deny the allegations that they engaged in a sexual relationship, I can disregard their testimony if I find it lacks credibility.¹⁷ However, the State has the burden of proof on each independent charge. While I find that respondent engaged in criminal conduct in Mr. [REDACTED]'s presence, it does not necessarily follow that they had a sexual relationship.

The State's case essentially relies on the statement of Jody Holley. Ms. Holley stated that respondent told her she had a romantic relationship with Mr. [REDACTED], who Ms. Holley knew to be a Des Moines student. However, Ms. Holley did not testify at hearing. Her statement consists of the investigators' half page synopsis from the investigative report. Respondent contends that Ms. Holley was biased against her because Ms. Holley was paranoid that respondent was going to steal her boyfriend. While respondent's allegation of bias sounds a little fishy, the State could not rebut it because Ms. Holley did not testify.

I see this charge differently than the criminal conduct with a student charge. As discussed previously, the criminal conduct charge was supported by additional reliable evidence, including the footprints in the snow, the statement from the disinterested pawn shop employee, and respondent's admission to Detective DePhillips (who testified to the admissions at the hearing). There is not the same type of supporting evidence on the sexual relationship charge. While Ms. Holley appeared credible to the board's investigators, I had no means to assess Ms. Holley's credibility because she did not testify. Further, the investigative report's summary of her statement was brief and did

15 282 IAC 25.3(1)(c).

16 282 IAC 25.3(1)(e)(4).

17 *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) (a finder of fact is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive).

not set forth specific statements she made. The quality of the evidence is not sufficient to meet the burden of proof on this violation.

Drug use with a student: The board's regulation prohibiting a licensee from failing to make reasonable efforts to protect the health and safety of a student would also be violated if a teacher used drugs with a student. The State alleged that respondent bought and used drugs with multiple students. In my view, the charge relies on the statements and testimony of [REDACTED] B [REDACTED]. Mr. B [REDACTED] stated and testified that he sold and used drugs with respondent. Respondent denies the same. The balance hinges on who provided more credible and reliable testimony.

Mr. B [REDACTED] has changed aspects of his story over time. When first interviewed by the school, he denied drug activity with respondent. He later said during interviews with the school, board investigators, and in his testimony at the hearing that he engaged in considerable drug activity with respondent. Mr. B [REDACTED] stated that respondent had a relationship (of some sorts) with [REDACTED] during both interviews with the school and his board interview. However, he denied knowing Martel at the hearing. I must consider the impact that these inconsistent statements have on Mr. B [REDACTED]'s credibility.

With that said, Mr. B [REDACTED] appeared credible at hearing, and many of his statements pertaining to the drug allegations seemed reasonable. Mr. B [REDACTED] admitted to a serious drug problem during his sophomore year in high school. He claimed to have cleaned up, and is now in his final year of school. He is on the high school baseball team, so he has an incentive to comply with school regulations. He stated he might be unclear about some incidents because two years have passed and he is trying to forget his years as a drug dealer and abuser.

Mr. B [REDACTED] testified clearly and repeatedly that he sold to and used drugs with respondent. He described once occasion in which he and a friend drove to West Des Moines to smoke marijuana with respondent at her ex-fiancé's home. Mr. B [REDACTED] described the entry to the home and the living room and kitchen. He drew a rough diagram of the home during the hearing. Mr. B [REDACTED] vividly described respondent smoking pot through a pipe on that occasion.

B Respondent attempted to impeach Mr. B [REDACTED] by alleging that Mr. B [REDACTED] did not know the specific location of the house and did

not accurately describe the layout of the home. However, he did know that the home was in West Des Moines and he described the main road he used to get there. His description of the home was not markedly different from any information respondent provided.

^B Mr. [REDACTED] also described in detail the incident when he accidentally brought his pot pipe to school. Once he discovered the pipe, he did not want to hold it because school officials searched student lockers on a random basis. He gave the pipe to respondent to hold at her desk during the school day. His account of this incident at hearing was consistent with his prior statements.

^B There is no evidence to indicate that Mr. [REDACTED] is biased against respondent. Even respondent testified that she and Mr. [REDACTED] had a good relationship.

^B Mr. [REDACTED] appeared truthful during the hearing, in an unorthodox way. He was a reluctant witness who only testified under a subpoena issued by respondent. He reasonably explained why he did not recall details of every event that occurred while he was abusing drugs two years ago. He gave testimony that was favorable to other areas of respondent's case. He criticized school officials in places. He acknowledged his own prior wrongful conduct. However, on the drug allegations, he was clear, specific, and was not shaken by follow-up questions.

^B Mr. [REDACTED] is not the most reliable witness ever to take a witness stand. However, respondent is alleged to have committed illegal acts with and in the presence of behaviorally challenged students. These kids, by the nature of their placement in the program, will be impeachable to some degree. That does not mean that everything they say is unbelievable. In this case, my evaluation of Mr. [REDACTED]'s testimony, the manner in which he appeared at hearing, his prior statements, and the reasonableness and plausibility of his testimony, I find that his testimony regarding respondent's drug use is truthful. The State has satisfied its burden on this charge.

^B The violation is extremely serious for obvious reasons. Mr. [REDACTED] had a serious drug problem as a sophomore in high school. Rather than encourage him to get help, respondent encouraged to further his drug habit him by buying from and using with him. License revocation is the only acceptable sanction for this violation.

SUMMARY AND SANTIION

Summary: Respondent was convicted of a crime, but her conviction did not arise to the level of a crime that would affect her teaching performance. She did not violate 282 IAC 25.3(1)(b).

The State did not meet its burden to prove that respondent had sexual contact with or a romantic relationship with a student, as prohibited by 282 IAC 25.3(1)(c) and 25.3(1)(e)(4).

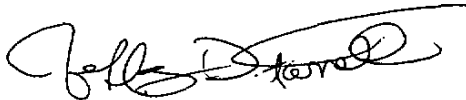
Respondent violated 282 IAC 25.3(6)(c) by buying drugs from a student, using drugs with a student, and by engaging in criminal behavior with a student.

Sanction: The violations of section 25.3(6)(c) are egregious for reasons discussed in the body of this decision. Any one of the violations, standing alone, would justify a lengthy suspension or revocation. In combination, they require a license revocation.

ORDER

The teaching license of respondent Danielle Michelle Peterson, License No. 336195, is hereby revoked.

Signed this 10th day of April, 2006.



Jeffrey D. Farrell
Administrative Law Judge

cc: AGO - Chris Scase
Attorney - Sharon Greer
BEE - George Mauer

Appeal Rights

Respondent may appeal this proposed decision to the Iowa Board of Educational Examiners pursuant to 282 IAC 11.28.